

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**CAMERON BARRAGAN AND
DIAMOND PRICE, INDIVIDUALLY
AND AS NEXT FRIEND OF
CAMERON BARRAGAN, A MINOR,**

Civil Action No. 3:19-CV-50

Plaintiffs,

VS.

LIBERTY COUNTY MUTUAL INSURANCE COMPANY,

Defendant.

**DEFENDANT LIBERTY COUNTY MUTUAL INSURANCE COMPANY'S NOTICE OF
REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Liberty County Mutual Insurance Company (“Liberty Mutual”) files its Notice of Removal to remove from the 162nd Judicial District Court of Dallas County, Texas to this Court a suit styled *Cameron Barragan and Diamond Price, Individually and as v. Liberty County Mutual Insurance Company*, docketed under Cause No. DC-18-18061 (hereinafter referred to as the “State Court Action”).

I. STATEMENT OF JURISDICTIONAL BASIS FOR REMOVAL

1. This Court has original diversity jurisdiction under 28 U.S.C. §1332(a)(1) and 28 U.S.C. § 1441(a).

2. Under 28 U.S.C. §1446(a), venue of the removed action is proper in this Court as it is the district and division within which the State Court Action is pending.¹

¹ On February 7, 2019, Defendant filed a Motion to Transfer Venue and Original Answer and requested that the Dallas District Court transfer the case to Hays County, the proper venue. Out of an abundance of caution and not to

II. TIMELINESS OF NOTICE OF REMOVAL

3. This Notice is timely under 28 U.S.C. § 1446(b). It is filed within 30 days after service of citation and Plaintiffs' Original Petition on Liberty Mutual. Plaintiffs' Original State Court Petition naming Defendant was filed on November 30, 2018. Defendant Liberty Mutual was served on January 9, 2019.

4. An Index of all documents filed in the State Court Action are attached hereto as Exhibit "A," as required by 28 U.S.C. §1446(a). Further, a list of all counsel of record, including addresses, telephone numbers, and parties represented is attached as Exhibit "B."

III. NATURE OF PLAINTIFF'S CASE AGAINST DEFENDANT

5. This suit involves an automobile accident that occurred in Hays County, Texas (the "Claim"). Liberty Mutual is the insurer for Plaintiffs.

6. Plaintiffs' now sue Defendant for breach of contract and violations of the Texas Insurance Code.

IV. JURISDICTIONAL BASIS FOR REMOVAL: DIVERSITY

7. Pursuant to 28 U.S.C. §1332(a)(1), this Court has diversity jurisdiction.

8. Plaintiffs are residents of El Paso County, Texas as alleged in her Original Petition.²

9. Liberty Mutual was, at the time this action commenced, and still is, a citizen of Massachusetts. Therefore, complete diversity exists between Plaintiffs and Defendants.

10. Moreover, the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00. *See* 28 U.S.C. §1332(a)(1). Pursuant to 28 U.S.C. § 1446(c)(2), the amount demanded

appear waive its right to removal, Liberty Mutual filed this Notice of Removal with relevant documents in the Northern District of Texas as well as the Western District of Texas, where Hays County is located.

² Plaintiffs' Original Petition, attached hereto as Exhibit A-2.

by Plaintiffs' in their Original Petition is deemed to reach the amount in controversy for purposes of this Notice.

11. Because Texas law allows recovery for attorneys' fees and penalties when an insurer fails to comply with the Texas Insurance Code, this Court must consider such fees and penalties as it assesses the amount in controversy. *See Zapata v. Allstate Indem. Co.*, No. DR-07-CV-063, 2008 WL 11416943, at *5 (W.D. Tex. Apr. 15, 2008)(citing *Hartford Ins. Group v. Lou-Con Inc.*, 293 F.3d 908, 911–12 (5th Cir.2002).

12. Plaintiffs' Original Petition states, "Plaintiffs seeks to recover over \$200,000.00 but not more than \$1,000,000.00."³ Further, Plaintiffs illustrate that the damages will exceed the jurisdictional limit by seeking actual damages to "recover the amount of Plaintiffs' claims, injuries, damages, 18 percent per annum of the amount of such claim as damages, and reasonable attorney's fees, under Chapters 541 and 542, Texas Insurance Code, and Chapter 38, Texas Civil Practice and Remedies Code, as may be determined by the Jury which are amounts within the jurisdictional limits of this court."⁴ Finally, Plaintiffs seek pre- and post -judgment interest, reasonable attorney's fees, and costs of court. All of these damages are considered when determining the jurisdictional limit. These amounts sought necessarily put Plaintiffs over the \$75,000 amount in controversy requirement.

13. Because complete diversity exists between the parties and the amount in controversy is more than the jurisdictional minimum of \$75,000, removal is proper.

V. NOTICE SHALL BE PROVIDED

14. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly give written notice of the filing of this Notice of Removal to Plaintiffs and will further file a copy of this Notice of Removal

³ Exhibit A-2 at p. 7.

⁴ *Id.* at p. 7.

with the District Clerk of Dallas County, Texas, where the State Court Action was previously pending.

VI. CONCLUSION

WHEREFORE, Defendant hereby request removal of the case styled *Cameron Barragan and Diamond Price, Individually and as Next of Friend of Cameron Barragan, a minor v. Liberty County Mutual Insurance Company*, Cause No. DC-18-18061, and respectfully requests that this Court assume full jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action, and for all other relief to which Defendants may be justly entitled.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2019, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court and also served counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Amy M. Stewart
Amy M. Stewart